

No. 113840

## IN THE SUPREME COURT OF ILLINOIS

THOMAS CROSS, in his official capacity as	)	
Minority Leader of the Illinois House and	)	
individually as a registered voter, CHRISTINE	)	
RADOGNO, in her official capacity as Minority	)	
Leader of the Illinois Senate, JAMES ORLANDO,	)	
individually as a registered voter, and	)	Original Action Under Article IV,
CHRISTINE DOLGOPOL individually as a	)	Section 3(b) of the Illinois Constitution
registered voter,	)	of 1970
	)	
Movants,	)	
	)	
vs	)	
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	
RUPERT BORGS MILLER, Executive Director of	)	
the Illinois State Board of Elections, HAROLD D.	)	
BYERS, BRYAN A. SCHNEIDER, BETTY J.	)	
COFFRIN, ERNEST C. GOWEN, WILLIAM F.	)	
McGUFFAGE, JUDITH C. RICE, CHARLES W.	)	
SCHOLZ, and JESSE R. SMART, all named in	)	
their official capacities as members of the Illinois	)	
State Board of Elections and LISA MADIGAN, in	)	
her official capacity as Attorney General of the	)	
State of Illinois,	)	
	)	
Respondents.	)	

**FILED** <sup>3</sup>

APR 13 2012

SUPREME COURT  
CLERK**MOTION FOR LEAVE TO FILE RESPONDENTS' BRIEF INSTANTER**

Respondents, by and through their undersigned counsel, and for their Motion for Leave to File Response Brief *Instanter*, state as follows:

1. By Order of the Court dated March 14, 2012, Respondents' Response Brief on the Issue of Whether the Movants' Motion for Leave to File Complaint Under Illinois Supreme Court Rule 382 Is Timely was scheduled to be filed on or before April 11, 2012. (A copy of said Order is attached hereto as Exhibit A).

2. In accordance with that Order, counsel for Respondents completed the brief on April 11, 2012.

3. Counsel for Respondents also served all parties on April 11, 2012. Respondents' counsel caused a copy of the Response Brief to be delivered to Movants' counsel located in Chicago, mailed a copy to Movants' counsel located in Itasca, Illinois, and emailed a copy to all counsel, as well.

4. Respondents' counsel intended to timely file their brief by sending the original of the brief, the Notice of Filing, and the requisite copies to the Clerk of the Illinois Supreme Court of Illinois by Federal Express. A Federal Express package containing said brief and related materials was prepared and was to be delivered to Federal Express on April 11, 2012. However, the member of the staff of Richard J. Prendergast, Ltd., instructed to devlier the Federal Express package to Federal Express left work on April 11 without the Federal Express package and inadvertently failed to deliver that package to Federal Express on April 11, 2012. See Affidavit of that staff member, Mr. Tjuan Fitch, attached hereto as Exhibit B.

5. Richard J. Prendergast has contacted Phillip A. Luetkehans, one of Movant's counsel, and has been advised that Movants have no objection to the instant motion.

WHEREFORE, Respondents respectfully request that the Court grant them leave to file their response brief, *instanter*. (The original and 20 copies of Respondents' Response Brief are enclosed herewith, together with a proposed order relating to the instant motion).

Respectfully submitted,

By: 

Richard J. Prendergast  
One of Respondents' Attorneys

Respondents Illinois State Board of  
Elections, its Executive Director  
Rupert Borgsmiller, and its Members

Respondent Illinois Attorney General Lisa Madigan

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No. 113840

IN THE

SUPREME COURT OF ILLINOIS

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THOMAS CROSS, etc., et al.,

Plaintiffs,

vs.

ILLINOIS STATE BOARD OF  
ELECTIONS, et al., etc.,

Defendants.

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Declaratory Relief

ORDER

This cause coming to be heard on the court's own motion;

IT IS ORDERED that the parties are directed to file briefs on the issue of whether the motion to file a petition for declaratory and injunctive relief as an original action pursuant to Supreme Court Rule 382 is timely.

The plaintiffs shall file a brief on or before March 28, 2012. The defendants shall file a brief on or before April 11, 2012. The reply brief, if any, shall be filed on or before April 18, 2012.

The motion for leave to file a petition for declaratory and injunctive relief remains under consideration pending further order.

Order entered by the Court.

**FILED**

MAR 14 2012

SUPREME COURT  
CLERK

IN THE SUPREME COURT OF ILLINOIS

THOMAS CROSS, in his official capacity as )  
Minority Leader of the Illinois House and )  
individually as a registered voter, CHRISTINE )  
RADOGNO, in her official capacity as Minority )  
Leader of the Illinois Senate, JAMES ORLANDO, )  
individually as a registered voter, and ) Original Action Under Article IV,  
CHRISTINE DOLGOPOL individually as a ) Section 3(b) of the Illinois Constitution  
registered voter, ) of 1970  
Movants, )  
vs )  
ILLINOIS STATE BOARD OF ELECTIONS, )  
RUPERT BORGSMILLER, Executive Director of )  
the Illinois State Board of Elections, HAROLD D. )  
BYERS, BRYAN A. SCHNEIDER, BETTY J. )  
COFFRIN, ERNEST C. GOWEN, WILLIAM F. )  
McGUFFAGE, JUDITH C. RICE, CHARLES W. )  
SCHOLZ, and JESSE R. SMART, all named in )  
their official capacities as members of the Illinois )  
State Board of Elections and LISA MADIGAN, in )  
her official capacity as Attorney General of the )  
State of Illinois, )  
Respondents. )

**AFFIDAVIT OF TJUAN FITCH**

Tjuan Fitch, being duly sworn, deposes and says:

1. I am an employee of Richard J. Prendergast, Ltd., one of Respondents' counsel.
2. This affidavit is submittal in support of Motion for Leave to File Respondents'

Brief Instanter.

3. In the afternoon of April 11, 2012, I was instructed to deliver a Federal Express package intended for the Clerk of the Illinois Supreme Court to the local Federal Express drop off center.

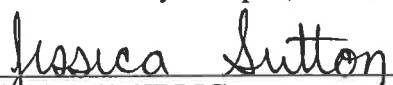
4. However, unfortunately, I left work that evening without remembering to take the package to Federal Express.

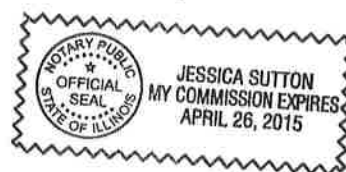
5. I did not discover this mistake until the morning of Thursday, April 12, 2012.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Juan Fitch

SUBSCRIBED and SWORN to before  
me this 12<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC





**CERTIFICATE OF SERVICE**

The undersigned, being first duly sworn upon oath, deposes and states that on April 12, 2012, he caused the foregoing **Respondents' Motion for Leave to File Its Response Brief *Instante*** to be served upon the parties as listed on the attached Service List on this 12<sup>th</sup> day of April, 2012, before 5:00 p.m.

A handwritten signature in black ink, appearing to read "R. J. [unclear]", is written over a horizontal line.



**SERVICE LIST**

*Cross, et al. v. IL State Board of Election, et al., No. 113840*

Clerk of the Illinois Supreme Court  
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Springfield, Illinois 62701

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Order Prepared By:

Richard J. Prendergast, Esq.

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